AFFIN BANK BHD

v.

SYED MOHAMED BUHARI

HIGH COURT MALAYA, KUALA LUMPUR
AZMEL MAAMOR J
[ORIGINATING SUMMONS NO: S24-1086-2000]
26 OCTOBER 2003

CONTRACT: *Loan - Terms of loan agreement - Loan for purchase of property - Refusal by defendant to comply with terms thereof - Whether plaintiff had claims over property - Whether there was basis for defendant's non-compliance*

The plaintiff had granted the defendant a housing loan in order for the defendant to purchase certain property ('the said property'). Clause 19 of the loan agreement required that the defendant, upon being issued a separate document of title to the said property, to sign the memorandum of transfer, charge and other relevant documents in respect of the said property with a view to transfer the title of the said property in the name of the defendant as owner and chargor and the plaintiff as chargee. However, after the individual title in respect of the said property was issued, the defendant failed and refused to comply with the terms of the loan agreement, resulting in this application by the plaintiff against the defendant.

Held (allowing the plaintiff's application):

[1] Since the defendant had not settled the loan that had been disbursed by the plaintiff to the defendant in respect of the purchase of the said property, the plaintiff had clearly shown that it had interests and claims over the said property. The defendant's contention that the completion of the said property was carried out by a new developer and not by the original developer could not be regarded as a good defence to the plaintiff's claim. The privity of contract was between the plaintiff and the defendant only, and the defendant's undertaking was solely in favour of the plaintiff. Since the plaintiff had discharged its part of the obligation through the disbursement of the loan, it would only be fair and just that the defendant should also comply with what it undertook to do under the terms of the loan agreement. His refusal to comply with the plaintiff's request to sign the documents had no basis whatsoever. (p 84 c-e)

For the plaintiff - CH Ong; M/s CK Lee & Assocs
For the defendant - Amarjeet Singh; M/s Zubeda & Amarjeet

Reported by Suresh Nathan

JUDGMENT

Azmel Maamor J:

Under encl. 1 the plaintiff claimed against the defendant as follows:

1. Deklarasi bahawa menurut Perjanjian Pinjaman Dan Penyerahan Hak bertarikh 18/10/1984 diantara Plaintif dan Defendan berkenaan dengan hartanah dipegang dibawah H.S.(D)3493 P.T. 824 Mukim Umbai, Daerah Jasin, Negeri Melaka (Dahulunya dikenal sebagai sublot 138 dipegang dibawah hakmilik Utama, Geran No. Pendaftaran 4204 Lot 1879 dan Geran No. Pendaftaran 4107 Lot 2048, kedua-dua dalam Mukim Umbai, Daerah Jasin Melaka (selanjutnya dirujuk sebagai "hartanah tersebut"), Plaintif sebagai Penerima hak hartanah tersebut berhak meminta Defendan menanda-tangani Memorandum Pindahmilik, cagaran dan dokumen-dokumen berkenaan untuk tujuan pendaftaran nama Defendan sebagai pemilik hartanah tersebut dan sebagai pemberi cagaran dan nama Plaintif sebagai penerima cagaran apabila hakmilik individu hartanah tersebut dikeluarkan;

2. Defendan telah memungkiri terma-terma Perjanjian Pinjaman dan Penyerahan Hak bertarikh 18/10/1984 tersebut dengan gagal melaksanakan tandatangan Memorandum Pindah-milik, cagaran dan dokumen-dokumen berkenaan untuk memberi kesan penuh kepada Perjanjian tersebut terutamanya Klausa 12 dan/atau 19;

3. Memandangkan hakmilik individu hartanah tersebut telah dikeluarkan maka Defendan diarahkan untuk menandatangani Memorandum Pindahmilik, cagaran dan dokumen-dokumen berkenaan untuk tujuan pendaftaran nama Defendan sebagai pemilik hartanah dan sebagai pemberi cagaran dan nama Plaintif sebagai penerima cagaran yang telah memberi pinjaman perumahan kepada Defendan berdasarkan Perjanjian Pinjaman dan Serah Hak bertarikh 18/10/1984;

4. Sekiranya Defendan gagal melaksanakan dokumen-dokumen pindahmilik, cagaran dan dokumen-dokumen berkenaan tersebut dalam tempoh masa 14 hari dari tarikh perintah ini, maka Penolong Kanan Pendaftar diarah untuk menandatangani dokumen-dokumen tersebut untuk memberi kesan penuh kepada perintah ini;

5. Pejabat Tanah yang menguruskan hakmilik hartanah tersebut diarah untuk mendaftarkan nama Defendan sebagai pemilik hartanah tersebut dan juga sebagai pemberi cagaran dan nama Plaintif sebagai penerima cagaran untuk pinjaman perumahan berkenaan untuk memberi kesan kepada perintah ini; dan

6. Kos permohonan ini dan kos serta perbelanjaan pindahmilik dan cagaran ditanggung oleh Defendan.

The brief facts of the case are as follows. The plaintiff had granted the defendant a housing loan in order to enable the defendant to purchase the property held under H.S.(D) 3493 P.T. 824 Mukim Umbai, Daerah Jasin Negeri Melaka (the said property). The terms of this transaction are contained in the Loan Cum Assignment Agreement dated 18 October 1984. Clause 19 of the said loan agreement requires the defendant as the borrower, that upon the issuance of a separate document of title to the said property the defendant, by notice in writing from the plaintiff, to sign the memorandum of transfer, the charge and other relevant documents in respect of the said property with a view to transfer the title of the said property in the name of the defendant as owner and also as chargor and the plaintiff as chargee in accordance with the terms of the Loan Cum Assignment Agreement. Clause 19 reads as follows:

19. Upon the issuance of a separate document of title to the said Property, the Borrower shall at his own cost and expense and upon being so required to do by notice in writing from the Bank take a transfer of and execute a legal charge over the separate document of title to the said Property, such charge to be in the Bank's standard form (with such variation thereof as the Bank may require) in favour of the Bank to secure the repayment of the Bank of the balance of the Loan then due and all other moneys together with interest thereon at the Prescribed Rate payable and owing by the Borrower thereon to the Bank under and by virtue of this Assignment at the date of execution of this Agreement

The individual title in respect of the said property had been issued. On being requested by the plaintiff to sign the necessary documents the defendant failed and refused to comply. Hence this action was filed by the plaintiff against the defendant.

In my view the dispute between the plaintiff and the defendant should be adequately determined by construing the provisions of the Loan Cum Assignment Agreement of 18 October 1984 entered into by the two parties. Under the terms of the said agreement the responsibility of the plaintiff was to disburse the loan to the defendant in order to pay for the purchase of the said property. The loan had been disbursed by the plaintiff. On the part of the defendant when the separate document of title to the said property had been issued, the

defendant, on being requested in writing by the plaintiff, would be obliged to sign the memorandum of transfer, the charge and other relevant documents in respect of the said property in order to transfer the title of the said property to the defendant as owner and chargor and the plaintiff as chargee. This appear to be the clear requirements of cl. 19 of the said loan agreement. Letters dated 22 February 2000 and 7 March 2000 had been issued by the plaintiff to the defendant giving notice to the defendant to cause the relevant documents to be signed in order to enable the transfer of the said property in the name of the defendant and at the same time to be recorded that the property was charged by the defendant as chargor to the bank as chargee. However, the defendant rejected such requests and failed to sign the relevant documents. It is an undisputed fact that the defendant had not settled the loan that had been disbursed by the plaintiff to the defendant in respect of the purchase of the said property. As such the plaintiff had clearly shown that it had interests and claims over the said property.

The defendant's contention that the completion of the construction of the said property was carried out by a new developer, Jejaka Megah and not by the original developer could not be regarded as good defence to the plaintiff's claim. The privity of contract is between the plaintiff and the defendant only and the undertaking of the defendant was purely and solely in favour of the plaintiff. Since the plaintiff had discharged its part of obligation through the disbursement of the loan it would only be fair and just that the defendant should also comply with what the defendant undertook to do under the terms of the loan agreement. His refusal to comply with the plaintiff's request to sign the documents would have no basis whatsoever. In any case, there appeared to be a proper and legal takeover of the said project by Jejaka Megah from the previous developer, Mideasia Sdn. Bhd. In my view, the takeover by the new developer should not be a ground for the defendant to refuse to comply with the terms of the loan agreement which he had earlier agreed to comply with.

In the circumstances and for the reasons that I have stated above I allowed the plaintiff's application with costs.